

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

		X	
-----		:	
DOMINICK VOLINO, ET AL.,		:	
	Plaintiffs,	:	
		:	21 Civ. 6243 (LGS)
-against-		:	
		:	
PROGRESSIVE CASUALTY INSURANCE		:	
COMPANY, ET AL.,		:	
	Defendants.	:	
		:	
-----		X	
		:	
MICHAEL VERARDO, ET AL.,		:	
	Plaintiffs,	:	
		:	22 Civ. 1714 (LGS)
-against-		:	
		:	
PROGRESSIVE CASUALTY INSURANCE		:	
COMPANY, ET AL.,		:	
	Defendants.	X	

PLAINTIFFS' RESPONSE TO COURT ORDER DATED AUGUST 6, 2024

Pursuant to the Court's Individual Rule III.C.5, and the Court's Order dated August 6, 2024 (ECF No. 375), Plaintiffs submit the following table "detailing the amount of (a) the total settlement fund, (b) the Claims Administrator's fee, costs and expenses, (c) proposed attorneys' fees, costs and expenses, (e) the named Plaintiffs' proposed service fee, (f) any other deduction from the settlement fund before payment to class members and (g) the anticipated recovery in dollars and as a percentage of the plaintiff's estimated damages for the class and any subclass in the aggregate and per class member, including any assumptions used in calculating these amounts."

(a)	Total settlement fund	\$48,000,000 common fund with no reverter. ECF No. 371-1, ¶ 7.
(b)	the Claims Administrator's fee, costs and expenses	\$235,563 (0.5% of the settlement fund). ECF No. 371-6, at 4.
(c)	Proposed attorneys' fees, costs and expenses	Attorneys' fees up to one-third of the settlement fund (\$16,000,000); expenses not to exceed \$460,000. ECF No. 371, ¶ 46; ECF No. 371-1, ¶ 11.a.
(e)	The named Plaintiffs' proposed service fee	Service award up to \$15,000 per Settlement Class Representative (\$105,000 collectively) (0.2% of the settlement fund). ECF No. 371, ¶ 47.
(f)	Any other deduction from the settlement fund before payment to class members	None.
(g)	Anticipated recovery in dollars as a percentage of the plaintiff's estimated damages for the class (aggregate and per class member)	<p>Aggregate: \$31,199,437. ECF No. 371, ¶ 36.</p> <p>Per class member: average gross recovery of \$516, based on estimated class size of 93,000.¹ ECF No. 371, ¶ 36. (The average net recovery, after deduction of the claims administrator expenses, requested attorneys' fee and expenses, and proposed service award is \$335. ECF No. 370 at 8-10).</p> <p>Percentage: 70% of compensatory damages</p>

Class Counsel note there is *no* claims process. Class Members will automatically receive a pro rata payment based on their actual damages. Furthermore, there is *no* reverter or cy pres. After deduction for attorneys' fees and costs and service award and for settlement administration costs, every single dollar in the settlement fund will be distributed to Class Members. Whether considered prior to reduction for attorneys' fees and costs (69.3%) or even assuming the maximum

¹ It is currently estimated that the Settlement Classes include approximately 93,000 members, based on claims data produced by Defendants through May 17, 2024. *See* Bates Decl. at 36 n.6. The final size of the Settlement Classes will be ascertained once the updated Settlement Class data through the date of preliminary approval is obtained from Defendants in accord with the Settlement Agreement. *Id.*

amount of attorneys' fees and costs is granted (69.3% minus 33.3%), such amount is an impressive result, and is considerably higher than many settlements deemed fair and reasonable. *See, e.g., City of Detroit v. Grinnell Corp.*, 356 F. Supp. 1380, 1386 (S.D.N.Y. 1972), *aff'd in part, rev'd on other grounds*, 495 F.2d 448 (2d Cir. 1974) (a recovery of 3.2% to 3.7% of the amount sought is "well within the ball park" of reasonableness); *Mikhlin v. Oasmia Pharm. Ab*, No. 19-CV-4349 (NGG) (RER), 2021 U.S. Dist. LEXIS 66719, at *23 (E.D. N.Y. Jan. 6, 2021) (noting that median percentage of damages in class actions is 12.8%); *Kassman v. KPMG LLP*, No. 11 Civ. 3743 (LGS), 2021 U.S. Dist. LEXIS 71243 (S.D. N.Y. Apr. 12, 2021) (recovery of 20% of potential damages in class settlement is "within the range of settlements approved by courts in this District") (collecting cases).

Dated: August 9, 2024

Respectfully submitted,

/s/ Jake Phillips

Jacob L. Phillips (admitted *pro hac vice*)

JACOBSON PHILLIPS PLLC

478 E. Altamonte Dr., Ste. 108-570

Altamonte Springs, Florida 32701

Telephone: (407) 720-4057

Email: jacob@jacobsonphillips.com

Andrew J. Shamis (NY #5195185)

SHAMIS & GENTILE, P.A.

14 NE First Avenue, Suite 705

Miami, Florida 33132

Telephone: (305) 479-2299

Email: ashamis@shamisgentile.com

Email: edwine@shamisgentile.com

Hank Bates (admitted *pro hac vice*)

Tiffany Oldham (admitted *pro hac vice*)

Lee Lowther (admitted *pro hac vice*)

CARNEY BATES & PULLIAM, PLLC

One Allied Drive, Suite 1400

Little Rock, Arkansas 72202

Telephone: (501) 312-8500
Email: hbates@cbplaw.com
Email: toldham@cbplaw.com
Email: llowther@cbplaw.com

Scott Edelsberg (admitted *pro hac vice*)
EDELSBERG LAW, PA
20900 NE 30th Avenue, Suite 417
Aventura, Florida 33180
Telephone: (305) 975-3320
Email: scott@edelsberglaw.com
Email: chris@edelsberglaw.com

Edmund A. Normand (admitted *pro hac vice*)
NORMAND PLLC
3165 McCrory Place, Suite 175
Orlando, Florida 32803
Telephone: (407) 603-6031
Email: ed@normandpllc.com

Thomas M. Mullaney (TM-4274)
THE LAW OFFICE OF THOMAS M. MULLANEY
530 Fifth Avenue, 23rd Floor
New York, New York 10036
Telephone: 212-223-0800
Email: tmm@mullaw.org

Brian A. Glasser (admitted *pro hac vice*)
James L. Kauffman (*pro hac vice* pending)
BAILEY & GLASSER, LLP
1055 Thomas Jefferson Street NW, Suite 540
Washington, DC 20007
Telephone: (202) 463-2101
Email: bglasser@baileyglasser.com
Email: jkauffman@baileyglasser.com
Counsel for Plaintiffs